

§ 458.79

§ 458.79 Burden of proof.

In a hearing concerning an alleged violation of § 458.2 (Bill of rights of members of labor organizations) or § 458.37 (Prohibition of certain discipline), the complainant shall have the burden of proving the allegations of the complaint by a preponderance of the evidence. In a hearing concerning an alleged violation of §§ 458.26–458.30, the Chief, DOE shall have the burden of proving the allegations of the complaint by a preponderance of the evidence. In a hearing concerning an alleged violation of other standards of conduct matters, the District Director shall have the burden of proving the allegations of the complaint by a preponderance of the evidence.

[45 FR 15158, Mar. 7, 1980. Redesignated and amended at 50 FR 31311, 31313, Aug. 1, 1985; 59 FR 15117, Mar. 31, 1994; 62 FR 6094, Feb. 10, 1997]

§ 458.80 Unavailability of Administrative Law Judges.

In the event the Administrative Law Judge designated to conduct the hearing becomes unavailable, the Chief Administrative Law Judge shall designate another Administrative Law Judge for the purpose of further hearing or issuance of a recommended decision and order on the record as made, or both.

§ 458.81 Objection to conduct of hearing.

(a) Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence, may be stated orally or in writing accompanied by a short statement of the grounds for such objection and included in the record. No such objection shall be deemed waived by further participation in the hearing. Such objection shall not stay the conduct of the hearing.

(b) Automatic exceptions will be allowed to all adverse rulings. Rulings by the Administrative Law Judge shall not be appealed prior to the transfer of the case to the Assistant Secretary, but shall be considered by the Assistant Secretary only upon the filing of exceptions to the Administrative Law Judge's recommended decision and order in accordance with § 458.88.

29 CFR Ch. IV (7–1–09 Edition)

§ 458.82 Motions after a hearing.

All motions made after the transfer of the case to the Assistant Secretary, except motions to correct the record under § 458.76(l), shall be made in writing to the Assistant Secretary. The moving party shall serve a copy of all motion papers on all other parties. A statement of service shall accompany the motion. Answers, if any, must be served on all parties and the original thereof, together with a statement of service, shall be filed with the Assistant Secretary after the hearing, within seven (7) days after service of the moving papers unless it is otherwise directed.

§ 458.83 Waiver of objections.

Any objection not duly urged before an Administrative Law Judge shall be deemed waived.

§ 458.84 Oral argument at the hearing.

Any party shall be entitled, upon request, to a reasonable period prior to the close of the hearing for oral argument, which shall be included in the official transcript of the hearing.

§ 458.85 Transcript.

An official reporter shall make the only official transcript of such proceedings. Copies of the official transcript will be provided to the parties, in accordance with the provisions of part 70 of this title, or they may be examined in the district office in whose geographic jurisdiction the hearing has been held.

[45 FR 15158, Mar. 7, 1980. Redesignated at 50 FR 31311, Aug. 1, 1985, as amended at 63 FR 33780, June 19, 1998]

§ 458.86 Filing of brief.

Any party desiring to submit a brief to the Administrative Law Judge shall file the original within ten (10) days after the close of the hearing: *Provided, however,* That prior to the close of the hearing and for good cause, the Administrative Law Judge may grant a reasonable extension of time. Copies of such brief shall be served on all of the parties to the proceeding. Requests for additional time in which to file a brief under authority of this section made